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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

0473

July 20, 1993

Mr. William F. Caton  
Acting Secretary - Stop Code 1170  
Federal Communications Commission  
1919 M Street, Room 222  
Washington, DC 20554

Re: MM Docket 93-155

Dear Mr. Caton:

Transmitted herewith on behalf of Richard P. Bott, II, are an original and fourteen (14) copies of its "Reply to Opposition to Request for Leave to File Petition for Reconsideration".

Should any questions arise concerning this matter, kindly communicate directly with the undersigned.

Very truly yours,

*Kathleen Victory*  
Kathleen Victory

Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 20 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of

**RICHARD BOTT II**  
(Assignor)

and

**WESTERN COMMUNICATIONS, INC.**  
(Assignee)For Assignment of Construction  
Permit of Station KCVI (FM),  
Blackfoot, Idaho) MM Docket 93-155

) File No. BAPH-920917GO

TO: The Commission

REPLY TO OPPOSITION TO PETITION FOR LEAVE TO FILE  
PETITION FOR RECONSIDERATION

Richard P. Bott, II, permittee of Station KCVI (FM), Blackfoot, Idaho, and applicant in the above-captioned proceeding, through his counsel hereby replies to the Mass Media Bureau's Opposition to Petition for Leave to File Petition for Reconsideration ("Opposition") filed July 8, 1993. In support, the following is respectfully submitted.

1. The Bureau argues that Bott lacks a procedural basis for filing his Petition for Reconsideration ("Petition") under Section 1.106 of the Commission's rules and states no facts to support his request for waiver of Section 1.106. On the contrary, not only did Bott make a full factual showing to support his waiver request, he provided multiple cases where hearing designation orders were modified to correct mistakes, or to modify or delete issues. Petition for Leave, at ¶¶3-5.

2. The Commission stated that the basis for the designation of Issue (a) against Bott was a conflict between his statements in the comparative hearing and his statement in this proceeding. If there is no conflict in the statements relied upon by the Commission as the basis for the HDO then it follows that there is no basis for the expenditure of the limited resources of the Commission and the parties to try a non-issue.

3. In the Opposition, the Bureau argues that Bott "speculates" that the Commission misinterpreted his statements in this proceeding and "disagree[s] with the HDO's characterization of the facts." Opposition, at 2, 3. On the contrary, the HDO at ¶9 specifically described the conflict between Bott's comparative hearing testimony and his declaration in this proceeding giving rise to this hearing -- a conflict as to when he determined to broadcast a commercial religious format. Bott has established as

a matter of fact that the statements relied upon by the

addition of a misrepresentation issue against Bott.<sup>2</sup>

4. The Bureau misquotes the language of the HDO in arguing that the HDO clearly established "the basis for designating the above-captioned applications [sic] for hearing . . . ." Opposition, p. 2, ¶4. The Bureau's misquotation of the HDO creates the impression that the Commission set Bott's application for hearing because of factual questions regarding whether Bott misled or lacked candor with the Commission regarding his integration commitment in the course of the comparative hearing. However, the HDO shows that the Commission believed itself faced with an either/or choice; namely, because of the "conflicting" statements Bott must have misled or lacked candor with the Commission either at the comparative hearing (when he represented that he had not yet determined the format) or in this proceeding (when, the Commission erroneously said, he represented that, during the pendency of the comparative hearing, he had intended to broadcast a commercial religious format). Thus, if, as established by review of the statements as they exist in the record, there is no inconsistency, then there can be no basis for the issue.

5. As Bott has shown, absent the misrepresentation issue, under current Commission policy and rules, the pending assignment

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<sup>2</sup> Since there is no inconsistency between the Bott's statements, any inquiry by the Commission into Bott's business judgement in deciding to sell the construction permit for no profit is pure speculation. It is current Commission policy not to enter into such speculation. Eagle 22, Ltd., 7 FCC Rcd 5295 (1992).

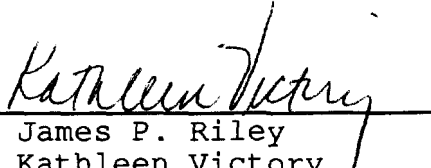
application would have been granted. Eagle 22, Ltd, 7 FCC Rcd. 5295 (1992). Since there is no question of fact warranting a hearing on Issue (a), the Commission should reconsider its action in issuing the HDO in this proceeding.

Richard P. Bott respectfully submits that the Commisison should waive Section 1.106, and accept and grant his Petition for Reconsideration and grant his application for assignment of construction permit.

Respectfully submitted,

RICHARD P. BOTT, II

By

  
James P. Riley  
Kathleen Victory  
His Attorneys

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July 20, 1993

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**CERTIFICATE OF SERVICE**

I, Delphine I. Davis, a secretary in the law office of Fletcher, Heald & Hildreth, hereby certify that I have on this 20th day of July, 1993, had copies of the foregoing "REPLY TO OPPOSITION TO REQUEST FOR LEAVE TO FILE PETITION FOR RECONSIDERATION" mailed by first-class United States mail, postage prepaid, to the following:

\*The Honorable James H. Quello  
Interim Chairman  
Federal Communications Commission  
1919 M Street NW/Room 802  
Washington, DC 205554

\*The Honorable Andrew C. Barrett  
Commissioner  
Federal Communications Commission  
1919 M Street/Room 844  
Washington, DC 20554

\*The Honorable Ervin S. Duggan  
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\*Honorable Arthur I. Steinberg  
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Federal Communications Commission  
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